International Masonry Institute *and* Anthony R. Ficarri. Case 5–CA–29760

June 21, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND MEISBURG

On March 22, 2002, Administrative Law Judge David L. Evans issued the attached decision. The General Counsel filed exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief. The Respondent filed cross-exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge dismissing the complaint in its entirety.

Dated, Washington, D.C. June 21, 2004

Robert J. Battista,	Chairman
Peter C. Schaumber,	Member
Ronald Meisburg,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Karen Itlin Roe, Esq., for the General Cunsel.
Seymour M. Waldman, Esq., of New York, New York, for the Respondent.
Anthony Ficarri, Pro Se, of McKees Rocks, Pennsylvania, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID L. EVANS, ADMINISTRATIVE LAW JUDGE. This case under the National Labor Relations Act (the Act) was tried before me in Baltimore, Maryland, on October 25–26, 2001.[1] On May 21, 2001, Anthony Ficarri, an individual, field charges under Section 10(b) of the Act alleging that International Masonry Institute (the Respondent or IMI) has engaged in unfair labor practices as set forth in the Act. Upon an investigation of that charge, the General Counsel issued a complaint alleging that the Respondent had violated Section 8(a)(1) and (3) of the Act by threatening employees and by discharging Ficarari because he had engaged in union and concerted activities that are protected by Section 7 of the Act. The Respondent filed an answer admitting that this matter is properly before the National Labor Relations Board (the Board) but denying the commission of any unfair labor practices.

Upon the testimony and exhibits entered at trial,[2] and after consideration of the briefs that have been filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law.

A. Jurisdiction and Labor Organization Status

The Respondent, as it admits, has been at all material times a labor-management trust fund that maintains its headquarters in Annapolis, Maryland, and an office and training center in Cascade, Maryland. (The Cascade facility was referred to by the witnesses as "Ft. Ritchie" because it was once a military base, and it is still owned by the Army.) At Ft. Ritchie, the Respon-

[1] In adopting the judge's conclusion that the Respondent did not unlawfully threaten or discharge Charging Party Ficarri, we note that Ficarri's complaint about the Brice House job stemmed from his apparent general belief that use of nonunion labor in renovating the Respondent's premises was inconsistent with the Respondent's philosophy and mission as a labor-management trust fund. The Respondent was not bound by a collective-bargaining agreement with a union-security clause, and Ficarri's complaint cannot reasonably be understood as an effort to get the Respondent to recognize or enter into a collective-bargaining agreement with a union, or to implement or modify any term and condition of employment on the Brice House job.

Because we agree with the judge, based on the above, that the Respondent did not violate the Act, we find it unnecessary to address the judge's alternative findings. Therefore, we also find it unnecessary to address the Respondent's cross-exceptions to the judge's decision, which deal with the judge's alternative findings.

[2] There are no exceptions to the judge's conclusion that the General Counsel conceded that Ficarri's complaining about some apprentices' not being indentured to a local union before beginning training was not protected activity.

[3] The General Counsel argues that certain statements in the Respondent's answering brief and cross-exceptions should be stricken because they are not supported by record evidence. Because we do not rely on the Respondent's statements to which the General Counsel refers, we find it unnecessary to pass on this issue.

[1] Unless otherwise indicated, all dates mentioned herein are from June 2000 through May 2001.

[2] Certain passages of the transcript have been electronically reproduced; some corrections to punctuation have been entered. Where I quote a witness who restarts an answer, and that restarting is meaningless, I sometimes eliminate words that have become extraneous; e.g., "Doe said, I mean, he asked . . ." becomes "Doe asked . . .". Some extraneous usages of "you know" are omitted from the quotations of transcript .

dent trains apprentices, upgrades the skills of journeymen in the masonry industry and engages other programs to support and promote the unionized masonry industry. During the 12 months preceding the issuance of the complaint, Respondent, in conducting its business operations, purchased and received goods valued in excess of $50,000 directly from suppliers who are located at points outside Maryland. During that same period of time the Respondent also derived from its business operations gross revenues in excess of $1 million. Therefore, at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. As the Respondent further admits, at all material times the International Union of Bricklayers & Allied Craftworkers (BAC), and Local 9, International Union of Bricklayers and Allied Craftworkers (Local 9) were labor organizations within the meaning of Section 2(5) of the Act.

B. The Alleged Unfair Labor Practices

1. Facts

a. Background

The Respondent is a jointly administered labor-management trust; the trustees are officers of BAC and various representatives of union-signatory contractors. The Respondent derives its income from employer contributions that are made pursuant to collective-bargaining agreements. The Respondent's principal function, to which it devotes about two-thirds of its income, is the training of workers for jobs in the industry. The Respondent provides 12-week prejob training courses for apprentices at its National Training Center at Ft. Ritchie, at satellite training centers in several metropolitan areas throughout the United States, and through mobile training units that can be moved to locations where additional masonry apprentices are needed. The recipients of the 12-week training courses can be individuals with little, or no, experience in the industry.

The Respondent neither recruits nor selects the trainees. The trainees are selected by the BAC local unions and the BAC Joint Apprenticeship Training Committees (JATC). Some BAC local unions induct (or indenture) prejob apprentice applicants into membership before they undergo any training, and those trainees are considered union members when they arrive at Ft. Ritchie (or arrive at other training facilities). Other locals do not accept prejob applicants into membership until they have completed the initial 12-week training program with the Respondent. BAC's Local 9, in Pittsburgh, Pennsylvania, is one of the latter locals. Local 9 is the "home local" of Charging Party Ficarri.

Ficarri began working as a stonemason in 1989 and joined the Union in 1994. In April 1997 Ficarri began working for the Respondent at Ft. Ritchie as a masonry instructor. In August 1997, the then-president of the BAC designated Ficarri to participate in the "Gerlannus Program." In that program, Ficarri trained in Germany for 3 years, learning various aspects of European stonemasons' skills (especially carving), and he received certification as a master stonemason. (The object of being sent, Ficarri testified, was to return and help establish a master stonemason's program for BAC.) During those 3 years in Germany, Ficarri continued to be paid journeyman wages by the Respondent. The Respondent also paid Ficarri's living expenses in Germany and paid for several trips back to the United States. (During the life of the Gerlannus program, the Respondent sent 5 other masons to Germany, one at a time.) In August 2000, Ficarri returned to the Ft. Ritchie training center at which time he continued to be designated an instructor. In fact, however, Ficarri had little work as a stonemason instructor; there already was an instructor at the facility, and there was no need for another because of a paucity of trainees. The Respondent, however, did not lay Ficarri off for lack of work; instead, it gave him maintenance-type assignments (such as raking leaves and painting) and chauffeuring trainees between Ft. Ritchie and the Baltimore airport.

Those designated by the Respondent as instructors, such as Ficarri, are not covered by any collective-bargaining agreement between the Respondent and a union; however, the Respondent pays wages and benefits to the instructors according to the area agreements of their home locals. Ficarri was therefore paid according to the Local 9 area agreement. The trainees at Ft. Ritchie are not employees of the Respondent (and any representation that they may have is only for dealings with employers in the areas of the locals that have sent them to Ft. Ritchie).

The Respondent's Annapolis headquarters is located in the James Brice House (the Brice House). The Brice House was built in the 18th century and it is a designated national historic landmark. Physically, the Brice House is a building composed of 5 parts.[3] The "West Wing" of the Brice House underwent certain renovations that began in January. The interior portion of the renovations included the plastering of the walls and the ceiling of a combination conference room and library. The plastering portion of the project took about 10 or 15 days in January. The duration of the entire renovation project is not disclosed by the record. (A portion of the Respondent's argument on brief assumes that the entire renovation project was finished when the plastering was finished. As discussed infra, this was not proved, and there are strong indications to the contrary.)

Two historical societies in the Annapolis area have formal easements on the exterior and interior of the Brice House, and no renovations can be performed at the building without the approvals of those societies. In order to satisfy the requirements of the historical societies, the Respondent engaged one John Lee to supervise the renovations.[4] Lee, a conservator who specializes in the restoration and renovation of old buildings throughout the United States, advised the Respondent that in Colonial times plastering such as that which was planned for the West Wing's library contained lime and horsehair.

To perform the lime-horsehair plastering successfully, the Respondent hired, at Lee's recommendation, two plasterers from England who were familiar with the techniques of earlier eras. The Respondent also assigned 3 of its plastering instructors to the project to help with the work and to learn the lime-horsehair technique from the English plasterers. The plasterers

[3] See the R. Exh. 2.

[4] The complaint does not allege that Lee was a supervisor within Sec. 2(11) of the Act; however, both the General Counsel and the Respondent argue on brief that he was.

were assisted by laborers who, inter alia, mixed the plaster outside the building and laborers who brought the mix to the plasterers. For the 10–15 days that it took to complete the plastering, Ficarri served as one of the laborers who mixed the plaster.

At the time of the events in question, Joan B. Calambokidis was the Respondent's president. Eugene Stinner was the Respondent's director of training. Ed Belucci, Jr., was the Respondent's deputy director in charge of apprenticeship and training. Clarence Nichols was the Respondent's deputy director in charge of regional training programs. Nichols and Belucci reported directly to Stinner, and Stinner reported directly to Calambokidis. The Respondent admits that all of these individuals were its supervisors or agents within Section 2(11) or (13) of the Act. The complaint further alleges that one Breck Hartseil was also a supervisor or agent of the Respondent; the Respondent admits that Hartseil held the position of director of the Respondent's Job Corps Program, but it denies that Hartseil held any special status. The Respondent's Job Corps Program is a separate training program for the underprivileged that is operated by the Respondent pursuant to a Federal Government contract. Trainees are selected by the Government to receive brick, tile and plastering training. When called as an adverse witness by the General Counsel, Nichols testified that Hartseil is in charge of eight regional Job Corps training centers and, as such, supervises instructors who report to him. Similarly, Stinner testified that, although Hartseil sometimes works as a plasterer, he: "[s]upervises and takes care of placement for Job Corps trainees at about five or six IMI-sponsored training programs." The Respondent offered no evidence to dispute this testimony by Stinner and Nichols. I therefore find that Hartseil was a supervisor of the Respondent within Section 2(11) and its agent within Section 2(13).

b. Evidence presented by the General Counsel

Although some of the apprentices at the Ft. Ritchie training center had become members (or "indentured" as potential members) of BAC locals, others were, as Ficarri put it: "brand new people trying to get into the Union." Ficarri testified that in "August/September" he spoke to Nichols about the fact that some (if not all) of the apprentices were not indentured as members of any BAC local union. According to Ficarri:

> [I told Nichols that] I thought that they would have to be indentured into the union first. You have to pay their initiation fee and maybe get three months of dues off of them so that in fact they are union members that are coming down for training so that after the 12 weeks of training they just can't pick up and leave and maybe go back to the other non-union company that they were working with after we had just given them all this knowledge.

Clarence [Nichols] said that that's not the way it works. That was up to the local governing body, whatever city they came from, to handle it. . . . IMI is simply there to train.

Ficarri further testified that he also called Bill Schmidt, the BAC field representative over his home local in Pittsburgh, to discuss the training of nonindentured apprentices at Ft. Ritchie. Schmidt told him the same things that Nichols had, and Schmidt added that not inducting trainees into a BAC local gave the local "a trial period to see if these people will work or will not work before they get out on the job and cost the contractor some money." When asked on direct examination if he ever discussed the nonunion status of trainees with any union-member trainees, Ficarri testified that he had spoken to only two (Frank Martinez and his partner, "Dan"). Ficarri testified that he only told Martinez and Dan that trainees may, or may not, be union members.

Ficarri testified that in "mid October/November," Nichols approached him as he was raking leaves on the Ft. Ritchie grounds. Ficarri told Nichols that, if the Respondent did not have anything more than leaf-raking for him to do, he would take a layoff and return to his home local's area to be referred to construction jobs there. Nichols asked Ficarri if he really meant what he was saying. Ficarri replied that he would think about it. Two days later, Ficarri asked Nichols to make an appointment for him with Stinner to discuss the matter. Ficarri further testified that, about a week later, he did have an appointment (alone) with Stinner. Ficarri told Stinner that he felt bad about being paid a journeyman's wage rate by BAC members to rake leaves. Stinner replied that he knew how Ficarri felt but that he should wait until at least Christmas and New Years were over to make any decision because, after that, there were potentials for some work at the then-forthcoming Brice House renovation project and also work as an instructor at a cathedral in Albany, New York. Ficarri agreed. None of the foregoing testimony by Ficarri is disputed.

Ficarri also testified that, following his conversation with Stinner, he had no further conversations with anyone about the possibility of being laid off. (As will be seen, Nichols testified that there was one more such conversation, in January, but the substance was the same; Nichols again encouraged Ficarri to stay.)

Ficarri testified that, during the first week in January 2001, he was directed to go with Robert Humbertson, a bricklayer instructor at Ft. Ritchie, to the Brice House project in Annapolis. There, according to Ficarri, "They were going to do some historical plaster work, but mainly I was doing the labor work, mixing plaster, mixing mortar, setting up and tearing down scaffolding, moving around different materials, sand mixers." Ficarri testified that there were "eight to 12" persons working at the Brice House project whom he listed and described as:

> There was John Lee—he was heading up the restoration for IMI—his assistant, Ellen. They had a laborer down there. His name was Jimmy. They had a carpenter. His name was Roger. They had another gentleman from the historical society in Annapolis working down there just helping out. I forget his name right now. The IMI had brought over two plasterers from England. Mike Wye and his girlfriend, Jill, came over and another gentleman that works with Mike, Rick Allen.
>
> Then there was myself [and] Bob Humbertson from the Fort Ritchie training center. There was John Totten, an IMI plaster instructor from New York, Greg Hartseil, the director of Job Corps from Florida who previous was a plaster instructor. There was Phil Graziani ... [who] was a

> plaster instructor from Philadelphia. There was another gentleman that came with Greg Hartseil from Florida. I don't know his last name, but his first name was Mike.

Ficarri testified that he made inquiries and was upset to learn that all of those employed at the Brice House project, except himself, Hartseil, Graziani, "Mike," and Totten, were not the members of any BAC local union or members of any other union.

Ficarri testified that he discussed the situation at Brice House with the other BAC instructors who were there during "probably three, four, five conversations." As an example, Ficarri testified:

> I had spoke to John Totten and told him, "Look at these people down here that are non-union. They're taking our [dues] money and . . . IMI is hiring these nonunion people."
>
> John said he didn't think that was right either. He really didn't know what to do about it. I said I didn't really know what to do about it except to further the complaints with my home local, and we would just take it from there.

At one point, Ficarri called BAC field representative Schmidt to discuss the matter. Ficarri told Schmidt that there were nonunion employees on the Brice House project and that he (Ficarri) thought that there should not be because the project was ultimately funded by BAC members. According to Ficarri, "Bill said that he was quite surprised by this and asked me if I knew for sure. I said, yes, I did know for sure because I asked these people."

Ficarri further testified that when Belucci once visited the Brice House project, he engaged Belucci in a conversation and:

> Well, I had addressed the problem of the non-union workers working at the Brice House to Ed Belucci. I told him, "Ed, what's going on? We have BAC work here, and there's non-union workers down here at the Brice House doing the work."
>
> Ed kind of agreed, but he was also kind of like shrugging it off almost in a sense of, "Well what can we do?" . . . Ed said that, "Well, this is Joan's [Calambokidis'] place down here, and that's pretty much up for her to decide."

Ficarri testified that Hartseil, whom I have found above to be a supervisor and agent of the Respondent, was present during this exchange.

Ficarri testified that he returned to the Ft. Ritchie complex in mid-January. There, he engaged his fellow instructors in conversations about the "non-union workers" whom the Respondent was using at the Brice House project. In five or six conversations, the other instructors agreed with him that BAC dues should not be used to hire nonunion workers. Totten suggested taking the problem back to the instructors' home locals; Ficarri agreed and stated that the instructors could ask their locals to withhold portions of the locals' contributions to the Respondent to protest the Respondent's employing nonunion workers at the Brice House project. Totten replied, "That's not a bad idea."

Ficarri further testified that, later in January, he approached Stinner at Ft. Ritchie when Stinner was with Nichols and Belucci outside of an office. According to Ficarri:

> As I went over to Gene, I had asked, "Gene, what's the big deal of having non-union workers down at the Brice House doing some work?"
>
> Gene said to me, "Look, that's Joan Calambokidis' area. That's up to her."

Ficarri testified that, as well as speaking to Stinner, Nichols and Belucci, and other instructors at Ft. Ritchie, he spoke to union-member trainees at Ft. Ritchie about the presence of nonunion employees at the Brice House, and he conveyed to them the same sentiment. Ficarri testified that he also suggested that the union-member trainees take up the matter with their home locals.

Ficarri further testified that, also in late January, at Ft. Ritchie, he met with Belucci and Nichols to discuss complaints that some of the trainees had brought to him about the meals and housing arrangements that the Respondent was providing for them. According to Ficarri:

> While I was addressing these complaints [of] the apprentices, the subject of the non-union workers came up at the Brice House. . . . I told Ed and Clarence that that wasn't right, having non-union workers down at the Brice House considering how the IMI gets its money. . . .[A]t which point Clarence Nichols told me, "You know, if you want to keep your job with IMI you should knock off that non-union talk." I didn't respond to this.

The complaint alleges that this remark by Nichols to Ficarri was a threat in violation of Section 8(a)(1).

The General Counsel called Humbertson as a witness. Humbertson corroborated Ficarri's testimony that Ficarri spoke to the union members who were working on the Brice House project about there being nonunion employees also working there. According to Humbertson, "Tony just said he didn't think it was right." Humbertson further testified that when he and Ficarri finished at the Brice House project and returned to Ft. Ritchie, Ficarri continued to complain to the instructors about the nonunion employees who were employed at the Brice House project. When asked to be specific about what Ficarri said to other instructors when they got back to Ft. Ritchie, Humbertson testified: "The same thing he was saying down there. He said that it wasn't right that we were a union company and we had non-union people working on the Brice House." Humbertson testified that Ficarri voiced this complaint quite frequently after he and Ficarri got back to Ft. Ritchie. (As Humbertson put it, Ficarri was a "broken record" on the topic.) When questioned by the Respondent, Humbertson also testified that Ficarri also complained to the other instructors at Ft. Ritchie about the fact that some of the trainees at Ft. Ritchie had not been made union members before being sent there for the 12-week course, and Ficarri complained about the presence of nonindentured trainees at Ft. Ritchie to some of the trainees who were union members. Humbertson testified, however, that Ficarri complained more about the nonunion employees who

had been at the Brice House project. The General Counsel also called Totten who testified consistently with Humbertson.

Ficarri lived at the Ft. Ritchie complex, but on the weekend of March 3–4 he returned to Pittsburgh to visit his family. Ficarri testified that he did not return to Ft. Ritchie on March 5 because he had car trouble. He called Belucci who excused his absence. On March 6, the car was fixed, but by then Ficarri's father had been diagnosed with a serious illness. Ficarri called Belucci again and asked for the rest of the week off to be with his family. Belucci agreed but stated that the Respondent wanted him to go to a job at Clemson University on Saturday, March 10. Ficarri agreed.

On March 8, Stinner called Ficarri at his family's home in Pittsburgh. Further according to Ficarri:

> [Stinner] told me, "You know, things aren't working out. We're going to have to let you go."
>
> I . . . asked Gene, "Well, could you explain this? Could you tell me why this is happening?"
>
> At which point Gene really raised his voice and was shouting in the phone and said, "Think of the things you've been saying and doing." He slammed the phone down and hung up on me.

Later in the day, further according to Ficarri, he called Nichols and:

> I said, "Clarence, I have some personal belongings down there that I'd like to come and get. I can come down tomorrow or whatever and pick them up."
>
> Clarence told me, "Well, you can't come down here at all. Gene Stinner doesn't want you on the property anywhere near any of the apprentices or students or instructors. You can't come down here at all."
>
> I said, "Well, what am I going to do about my things?"
>
> Clarence told me, "Well, we'll box them up, and we'll ship them to you."

Ficarri testified that no one in the Respondent's management told him that he was being laid off.

On cross-examination, Ficarri acknowledged that after November, he did not go back to Stinner and tell him that he had finished thinking it over and had decided that he did not want to be laid off. Ficarri also testified that he objected to the English plasterers being on the Brice House project because they were not members of any unions, even in England; Ficarri agreed that, had they been members of a union in England, he would not have objected to their presence at the Brice House.

Further on cross-examination, Ficarri acknowledged that during his August/September discussion with Nichols, Nichols told him that it was up to the BAC locals to decide when to initiate trainees into membership (before or after undergoing the 12-week training). Ficarri further agreed that, when he talked to Schmidt about the matter, Schmidt told him that Local 9's policy was that apprentices who are sent to the Respondent will not become members before completing the 12-week program. Ficarri further acknowledged that, at a Local 9 meeting that was conducted after he was terminated by the Respondent, he stated that Local 9 was sending nonunion apprentices to Ft. Ritchie for training by the Respondent, and that Local 9 should withdraw from the Respondent's training program and establish its own training program.

Further on cross-examination, Ficarri was asked, and he testified:

> Q. Did you ever complain about non-union members being trained at Fort Ritchie in the presence of Robert Humbertson?
>
> A. I believe that we discussed it, yes.
>
> Q. And you discussed it disapprovingly, did you not?
>
> A. Just that my own thoughts and feelings that they should be indentured first, yeah.
>
> Q. Did you ever say that you thought IMI should not be training non-members of the union at Fort Ritchie, as it was doing, to any trainee in the presence of Mr. Humbertson?
>
> A. No, I don't believe so.
>
> Q. You're not sure of that?
>
> A. I don't believe I would say something like that, no.

Ficarri further acknowledged that he told Local 9 officials, the Respondent's instructors at Ft. Ritchie, journeymen who were present at Ft. Ritchie for cross-training, and Nichols that trainees should be inducted into the Union before being sent to training by the Respondent at Ft. Ritchie. Nevertheless, at another point Ficarri testified: "No, I didn't say they shouldn't be training them. I said that we should be indenturing them."

General Counsel called Stinner as an adverse witness. When asked about the telephone call in which he terminated Ficarri, Stinner testified: "I told him I've got to let him go. He asked me if there was any particular reason, and I said, "Just look at what you've been doing the last several months." The General Counsel also called Nichols as an adverse witness. Nichols testified that he found out about Ficarri's termination when Stinner called him and "said that Tony Ficarri was no longer with us and for me to contact Tony Ficarri, because Tony was home, and to arrange to have Tony come to the center and pick up his stuff." Nichols did not, however, testify that he did so. Moreover, when Nichols was later called by the Respondent he did not deny Ficarri's testimony that he told Ficarri that Stinner did not want him on the Respondent's property again.

c. Evidence presented by the Respondent

Calambokidis testified that, while Ficarri was in Germany on the Gerlannus program, he continued to be paid by the Respondent as its employee, and the Respondent considered him still to be its employee when he returned from Germany. Nevertheless, Calambokidis testified that when Ficarri was scheduled to return there was already one stonemason instructor at Ft. Ritchie, there were fewer than 20 trainees, and "we do not like to add an additional instructor unless there are more than 20 trainees" at Ft. Ritchie. Calambokidis discussed with Stinner what other assignments the Respondent could give to Ficarri when he arrived. They agreed to use Ficarri for maintenance work until there was need for an instructor at the building of a new cathedral in Albany, New York. Shortly thereafter, however, the cathedral project fell through and the Respondent sent no instructors or trainees there.

BAC's Local 1 covers Washington, D.C., and certain areas of Maryland and Virginia; president of Local 1 is Jack Greenstreet. Calambokidis testified that in January, before the renovations at the Brice House began, she contacted Greenstreet and "talked about what we were planning to do at the Brice House, including the plastering in the West Wing; and [I] asked him if it was acceptable if we utilized our trainees and our IMI instructors on that project, as well as others we might need to call in." Calambokidis testified that Greenstreet replied that it was acceptable to Local 1 for the Brice House project.

Bucky Duncan is the president of Ficarri's home local and a member of the BAC Executive Council. Calambokidis testified that she met Duncan at a break during a BAC convention that took place in Florida on February 18–20. According to Calambokidis:

> Mr. Duncan said to me that Mr. Ficarri was coming back into the local union meetings, as well as talking with individual members, and telling them that IMI was training non-union workers at Fort Ritchie.
>
> And Mr. Duncan said to me, "I've got to tell you, this is very detrimental to IMI's interest. I cannot raise contributions when this kind of information is being brought back by someone that is working for you, and they are coming back and telling me this."
>
> I said, "I can't imagine what he is talking about. Let me check with Gene Stinner."

Calambokidis testified that this was the first she had heard of Ficarri's talking to anybody about nonunion trainees at Ft. Ritchie. Calambokidis testified that, on the same day, she went to Stinner who was also attending the Florida convention, and:

> I repeated what Mr. Duncan had said about Mr. Ficarri coming back saying that we were training non-union workers at the IMI training center. And I said to Gene, "What is he talking about?"
>
> And Gene said to me, "He [Ficarri] has [been talking about] the workers that are being sent by local unions that have not been accepted into membership before they come to Fort Ritchie. He views those as non-union workers." ...
>
> I said, "But that's up to the local. We don't control who comes to Fort Ritchie. We simply provide the training. And I said local JATCs select the members, and it's their policies. Some do, some don't."
>
> And he goes, "I know that, he [Ficarri] has been told that, but I guess, based on what Bucky is saying, he must be continuing to spread the misinformation."

Bud Jones is the president of BAC's Northeastern Ohio District Council. Calambokidis testified that on March 7, after she had returned to her office in Annapolis:

> Bud called and said, "I have spoken with two [journeymen who] came back from Fort Ritchie and said they had met a guy named Tony Ficarri who had gone to study in Germany, and Ficarri was telling them that IMI is training non-union workers at Fort Ritchie. . . . I've got to tell you, I can't raise money for you up here when you've got people telling them that."

Calambokidis testified that she then called Stinner to report her conversation with Jones. According to Calambokidis:

> Gene's response was, "Look, we don't have enough trainees to keep him on here. I've suggested before that we lay him off. I think we should just go ahead and do that.
>
> And I said, "That's fine; I agree with you. Go ahead and do it."

Calambokidis testified that she had the final authority for laying off, or discharging, employees at any of the Respondent's training centers. When asked on direct examination what influenced her decision in regard to Ficarri, Calambokidis replied:

> The call from Bud Jones was sort of the straw that broke the camel's back to me. If we didn't have anything for Tony to do, and he was spreading misinformation about our trainees at Fort Ritchie, that definitely influenced my decision to lay him off.

Calambokidis flatly denied that, before she decided to lay off Ficarri, she had heard anything to the effect that Ficarri had been complaining about nonunion workers at the Brice House project.

Nichols testified that he had four conversations with Ficarri during which Ficarri asked to be laid off. The first of these conversations was in October or November, and the last one occurred some time in January. Each time Nichols told Ficarri to wait and see what would turn up before taking a layoff. Nichols further testified that, in late January, Humbertson told him that "Tony Ficarri was talking to our union students and instructors, and complaining about us training non-union students at Fort Ritchie." Nichols testified that he made no reply to Humbertson. (On cross-examination, Nichols denied that he ever told Stinner about Humbertson's comment.)

Nichols testified that a few days after Humbertson spoke to him, he met with Ficarri who presented complaints from the trainees about meals and rooms. At the conclusion of that phase of the conversation, further according to Nichols, Ficarri asked why the Respondent was training "non-union students" at Ft. Ritchie. Nichols told Ficarri that the Respondent does not select the trainees; the local unions do. Further according to Nichols:

> About that time I told him, after I explained to him the [procedure and reasons], I told Tony that, "I know you talked to Bob Humbertson about us training non-union students here at Fort Ritchie. Knock off the non-union talk with our instructors and our students."

Nichols denied Ficarri's testimony that he told Ficarri that he should stop the nonunion talk "if you want to keep your job with IMI." Nichols further testified that Ficarri went on to complain that the Respondent's housekeeping and maintenance employees were also nonunion. Nichols told Ficarri that the Respondent had asked the union that represents the Respondent's secretary and truck driver to represent the housekeeping and maintenance employees into their unit, but that union refused. Nichols further testified that: "Tony said something like it's just not right, and left."

Nichols further testified that a few days later, in late January or early February, at Ft. Ritchie, Ficarri came to him at Ft. Ritchie and:

> He come up to me and he says that they was using non-union people down at the Brice House project to do the plastering.
>
> And I said, "Tony, stop. If you have any questions about the Brice House, to call Joan Calambokidis. I wasn't on the project and I don't know anything about it."

Nichols denied having any discussion with Ficarri, with Stinner present, about nonunion employees working at the Brice House. Nichols further denied telling Calambokidis about Ficarri's mentioning of nonunion employees working at the Brice House.

The Respondent called Stinner who testified consistently with Calambokidis about the exchange with her at the Florida convention in which Calambokidis reported to him what Duncan had said to her about Ficarri's complaining about the Respondent's training of nonunion apprentices at Ft. Ritchie. Stinner denied being present in any meeting with Ficarri in which Ficarri mentioned nonunion workers at the Brice House project.

Belucci testified for the Respondent that the Respondent's "rule of thumb" is that there be 20 trainees for each instructor. Belucci testified that, while Ficarri was present at Ft. Ritchie, the maximum number of trainees was 17. Therefore, there was no need for a second stonemason instructor when the Respondent laid off Ficarri, and a second stonemason instructor has not been appointed since Ficarri was terminated.

Belucci further testified that, in late January, he was present at Ft. Ritchie with Ficarri and Nichols when Ficarri complained about the nonunion trainees at Ft. Ritchie. According to Belucci, Nichols explained the procedures by which locals, not the Respondent, appoint the trainees. Further according to Belucci:

> He [Ficarri] said that it wasn't fair . . . that they [the trainees who had not been indentured to a BAC local] be there. . . .
>
> Mr. Nichols then told him to knock off the non-union talk.

Belucci also denied that Nichols stated to Ficarri: "If you want to keep your job, knock it off."

Belucci further testified that, also in late January, he met Ficarri at the Brice House. At the time, according to Belucci, the project "was completed other than cleanup." According to Belucci:

> Mr. Ficarri complained about the use of non-union workers on the Brice House, particularly Mr. John Lee. . . .
>
> I told him that the nature of Mr. Lee's business, a conservator, a preservationist supervisor, didn't warrant him being in any kind of union. He wasn't a craftsman to speak of.

Belucci denied that he told either Nichols or Stinner or Calambokidis about Ficarri's comment about nonunion employees working at the Brice House project. Belucci further denied being present with Stinner and Ficarri during any discussion about nonunion employees working at the Brice House.

d. Conclusions

The law that determines the dispositions of 8(a)(3) allegations is stated in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). Under *Wright Line*, the General Counsel has the initial burden of persuading the Board that he has established a prima facie case sufficient to support an inference that union activity or concerted activity that is protected by the Act was a motivating factor in the employer's action that is alleged to constitute discrimination in violation of Section 8(a)(3).[5] Such a prima facie case is established by proof that: (1) the employee engaged in union or concerted activities that are protected by the Act; (2) the charged employer knew or suspected that the alleged discriminatee had engaged in such activities at the time that the employer decided to take the action alleged to be discriminatory; (3) the actions alleged to be discriminatory, in fact, occurred; and (4) the employer's decision to discharge or otherwise discipline the alleged discriminatee was motivated, at least in part, by animus toward those activities. *Chelsea Homes*, 298 NLRB 813 (1990). If such a prima facie case is held to have been established, any defense that has been presented will then be addressed. The defense will be held to preponderate unless the General Counsel rebuts it by showing that it is pretextual, either by showing that it is without factual basis or by showing that it was not in fact relied upon.

In this case, the General Counsel contends that Ficarri, at the Brice House and at Ft. Ritchie, complained about the Respondent's employing nonunion employees at the Brice House, that those complaints constituted protected union activity, that Nichols threatened to discharge Ficarri for that activity in violation of Section 8(a)(1), and that Ficarri was discharged for engaging in that activity in violation of Section 8(a)(3). The Respondent contends that it did not discharge Ficarri; the Respondent contends that it merely granted Ficarri's prior requests for a layoff at a time that there was a lack of instructor work for Ficarri. The Respondent, however, concedes on brief (p. 25): "The hearing evidence does, indeed, indicate that although his layoff was imminent, the timing was precipitated by the Jones telephone call, following shortly after the Duncan conversation." That is, the Respondent concedes that Ficarri's (permanent) layoff was accelerated by the reports that Calambokidis received from Jones and Duncan. The Respondent further contends that, if Ficarri had complaints about nonunion employees being employed at the Brice House, Calambokidis, who made the decision to lay off Ficarri, did not know about those complaints at the time that she made her decision. Therefore, the Respondent contends that, factually, a finding of a prima facie case may not be premised on references to Ficarri's complaints about nonunion employees being employed at the Brice House.

[5] See also *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996), which reaffirms that the General Counsel's initial burden is one of persuasion, not just production of some evidence which may create the required inference.

The Respondent further contends that, legally, the Respondent cannot be faulted for discharging Ficarri for complaining about the presence of nonunion employees at the Brice House because such complaints are not activities that are protected under the Act. (The Respondent contends, specifically, that Ficarri had no statutory right to complain about the nonunion status of Lee, a supervisor.) The Respondent further contends that the only complaints by Ficarri that Calambokidis knew about at the time of the layoff were his complaints that certain apprentices at Ft. Ritchie whom the Respondent was training were nonunion. The Respondent also denies that those complaints constituted protected union activity. The Respondent therefore contends that, even if Nichol's threat was directed at Ficarri's complaining about nonunion apprentices at Ft. Ritchie, that threat may not be held to be a violation of Section 8(a)(1). Because Ficarri's complaints about the nonunion apprentices at Ft. Ritchie were not protected union activities, the Respondent further contends, it cannot be held to have violated Section 8(a)(3) even if it is found that it discharged him for those activities. (The General Counsel apparently concedes that Ficarri's complaining about some apprentices' not being indentured to a BAC local union before they began the training at Ft. Ritchie was not protected union activity because, on brief, the General Counsel does not advance the alternative argument that a discharge for such activity would have violated the Act.)

Under *Wright Line*, therefore, the first question before the Board is whether the facts as advanced by the General Counsel constitute a prima facie case. Ficarri and the nonunion employees at the Brice House renovation project were employees of the Respondent. At trial, I expressed skepticism whether an employee has a right to complain about the nonunion status of other employees in the absence of a collective-bargaining representative containing a valid union-security clause that requires union membership.[6] As I stated at trial, it seems to me that, in the absence of a valid union-security provision, an employee's complaint about another employee's nonunion status would be unprotected because it is necessarily a complaint that the other employee has exercised his Section 7 right not to join a union. On brief, the General Counsel cites no case to the contrary.

The General Counsel does cite *Beckley Belt Services Co*., 279 NLRB 512, 517 (1986), which involved employee complaints about the nonunion status of other employees. The employee complaints in *Beckley Belt*, however, were made pursuant to a valid union-security clause. Additionally, the complaining employees in *Beckley Belt* filed a grievance over the matter. In finding that the complaints and the grievance-filings were protected because they were made pursuant to a collective-bargaining agreement, the administrative law judge stated at 279 NLRB 518:

> It is virtually axiomatic that efforts of employees to enforce the contract by complaining to Supervisor Stegel on January 6 constituted concerted activity protected by Section 7 of the Act. *Kennickell Printing Co.*, 237 NLRB 318, 320 (1978). Likewise, filing of the grievance against Respondent on January 9 constituted concerted activity protected by the Act. *Sambo's Restaurant*, 260 NLRB 316, 319 (1982); *Farmers Union Cooperative Marketing Assn.*, 145 NLRB 1, 2 (1963).

Also, in affirming the administrative law judge, the Board's order in *Beckley Belt* was that the respondent cease discriminating against employees, "because they complain or file a grievance pursuant to the collective-bargaining agreement with the Union." The administrative law judge's reasoning, and the Board's order, in *Beckley Belt* are, of course, consistent with *NLRB v. City Disposal Systems*, 465 U.S. 822 (1984), in which the Supreme Court adopted the Board's holding in *Interboro Contractors*, 157 NLRB 1295 (1966), that individual activity involving attempts to enforce a provision of an existing collective-bargaining agreement is union activity that is protected by the Act because those attempts are an extension of the union activities that resulted in the agreement. In this case, however, there was no collective-bargaining agreement covering Ficarri and his fellow employees who were nonunion, much less one that contained a valid union-security agreement. The General Counsel's citation of *Beckley Belt* is accordingly unavailing.

The General Counsel also cites *Circle Bindery, Inc.*, 218 NLRB 861 (1975), enfd. 536 F.2d 447 (1st Cir. 1976), for the proposition that employees have a statutory right to complain about their fellow employees' lack of union membership. In *Circle Bindery*, employee Peter Verrochi was a union member who regularly worked for Excelsior, a unionized printer, but who, during a layoff, accepted temporary employment with Circle, a nonunion bindery. Verrochi complained to his union that Circle was putting the union's label on a booklet that had been printed by Excelsior. Verrochi felt that Excelsior's allowing (nonunionized) Circle to put the union's label on the booklet was a violation of the union's collective-bargaining agreement, and license agreement, with Excelsior. After Circle's management discovered that Verrochi had lodged this complaint with his union, it discharged him. The Board found that Verrochi's complaints about Circle's misuse of the union label[7] was protected union activity because:

> [I]t would seem obvious that Verrochi's reliance upon the Union's contract restricting union work to union shops was for the mutual aid and protection of himself and other union members, as noted above. Clearly, a union's purpose in authorizing the use of its label is to provide work for union members under union conditions of employment. To the extent a licensee such as Excelsior violates its agreement with a union . . . union members are deprived of work contractually reserved to them. This was Verrochi's chief concern.

That is, the Board's holding in *Circle Bindery* rests on the fact that Verrochi's complaint was founded in rights that were "contractually reserved" to union-represented employees. The hold-

[6] The tr., p. 346, L. 18, is corrected to change "in the absence of a union stop provision" to "in the absence of a union shop provision."

[7] The Board found the essence of Verrochi's complaint to be Circle's misusing the union label; the Board did not find that Verrochi's complaints were about Circle's employees' lack of union membership. (In fact, the membership of the Circle's employees, other than Verrochi, was not in issue.)

ing of *Circle Bindery*, therefore, does not support the General Counsel's contention that Section 7 of the Act protects any and all complaints by any union members who seek to improve the lot of any other union members. In this context, the holding of *Circle Bindery* is therefore no more than a reaffirmation of the principles of *City Disposal* and *Interboro Contractors*, supra, that an employee's efforts to vindicate contractually guaranteed rights is protected by Section 7 of the Act.

Even under the General Counsel's theory of this case, Ficarri was not attempting to invoke a provision of a contract that was negotiated for the benefit of himself or any other union members. And the General Counsel does not contend, and cannot contend, that Ficarri was attempting to secure for members of his union (or for members of any other union) work that was "contractually reserved to them," as work was reserved to the unionized employees in *Circle Bindery*. Rather, at best, Ficarri was attempting to secure work for union members that had *never* been contractually reserved to them. Moreover, to have been successful, Ficarri's complaining would have required the Respondent either: (1) to recognize unions that did not represent the plasterers or the laborers at the Brice House project, or (2) to discharge the nonunion employees at the Brice House project solely because they had exercised their Section 7 right not to become members of a labor organization. Because the Respondent is not a construction-industry employer, the first alternative would have been a violation of Section 8(a)(2); and the second alternative would have been a violation of Section 8(a)(3). In either event, Ficarri's objective was to secure unlawful conduct by the Respondent, and his activities were therefore not protected by the Act.

Finally, the employees' complaints in the other cases cited by the General Counsel involved the wages, hours, or other terms and conditions of employment of the complaining employees, and the complaints were held to be protected for that reason.

In summary, the General Counsel has failed to state a prima facie case that Ficarri engaged in activities that are protected by the Act by complaining about the Respondent's employing nonunion employees at the Brice House. Therefore, assuming that, as the General Counsel contends, Nichols threatened Ficarri with discharge because Ficarri complained about the Respondent's employing nonunion employees at the Brice House project, the Respondent did not violate Section 8(a)(1) by that conduct. And further assuming that, as the General Counsel further contends, the Respondent discharged Ficarri (or, at least, accelerated Ficarri's layoff) because Ficarri complained about the Respondent's employing nonunion employees at the Brice House project, the Respondent did not violate Section 8(a)(3) by that conduct. As these are the only violations alleged,[8] I shall accordingly recommend that the complaint be dismissed in its entirety.

[8] Again, the General Counsel does not advance as an alternative theory of violation that Ficarri's complaining about nonindentured apprentices at Ft. Ritchie was activity that was protected by the Act.

e. Alternative findings

For the possible purposes of review, I enter the following findings of fact:

1. While working at the Brice House, Ficarri did complain about the nonunion employees who were working there, and at least two supervisors of the Respondent knew it. According to Ficarri's undisputed testimony, the Respondent employed at the Brice House several employees who were nonunion. As well as John Lee (who, again, is a supervisor within Sec. 2(11) under the theories of both the Respondent and the General Counsel), the Respondent employed Lee's assistant Ellen, a laborer named Jimmy and a carpenter named Roger, and two plasterers from England. While the plastering was still in progress, I find, Ficarri mentioned to fellow-instructors Humbertson and Totten that he felt that the Respondent should not be using any nonunion employees on the project, and I find that Ficarri complained to BAC Field Representative Schmidt in a similar vein. I further find that, while he was working at the Brice House, Ficarri told supervisors Belucci and Hartseil that he objected to the Respondent's using nonunion employees at the Brice House.

2. Ficarri continued his complaints about the nonunion employees at the Brice House project even after he was sent back to Ft. Ritchie and, specifically, he complained to Stinner. The Respondent contends that, after Ficarri returned to Ft. Ritchie, he could not have been complaining about the presence of nonunion personnel at the Brice House renovation project because that project was over by the time that Ficarri returned to Ft. Ritchie. For the factual premise for this argument, the Respondent relies solely upon Belucci's testimony that, when Ficarri spoke to him about nonunion employees at the Brice House, the project "was completed other than cleanup." Ficarri admitted that the plastering portion of the project was over when he returned to Ft. Ritchie in mid-January, but plastering was not all there was to the project. Calambokidis testified that, before the project began, she met with Local 1's Greenstreet, and "I told him of the renovations; gave him a tour; talked about what we were planning to do at the Brice House, *including* the plastering in the West Wing." That is, the plastering was only part of the project. Moreover, Nichols testified that, in late January or early February, at Ft. Ritchie, Ficarri complained about the nonunion employees that "they was using" at the Brice House. Nichols did not testify that Ficarri complained about the nonunion employees whom the Respondent "had used" at the Brice House. Finally on this point, the Respondent presumably had the records that would reflect when the Brice House project finished and when Ficarri was returned to Ft. Ritchie. I draw an adverse inference against the Respondent for its failure to present those records to support its position that the Brice House renovation project was completed when Ficarri returned to Ft. Ritchie. I therefore credit Ficarri and find that, at Ft. Ritchie, in the presence of Nichols and Belucci, Ficarri asked Stinner, "[W]hat's the big deal of having nonunion workers down at the Brice House doing some work?"

Indeed, it is apparent to me that Ficarri complained about the presence of any nonunion personnel, or trainees, wherever he found them. I therefore also credit the testimonies of Humbertson and Totten that, when Ficarri was at Ft. Ritchie, he com-

plained to instructors, and to trainees who had been inducted into the BAC, that the Respondent should not be training apprentices who had not been inducted. (The testimonies of Humbertson and Totten are corroborated by Ficarri's immediately inconsistent testimony on cross-examination. Ficarri first admitted that he told Humbertson that the apprentices "should be indentured first," but, then, when asked if he stated to Humbertson that the Respondent should not be training nonmembers of the Union at Ft. Ritchie, he replied, "I don't believe I would say something like that.")

3. Nichols threatened Ficarri with loss of his job, both because Ficarri was complaining about the nonindentured apprentices at Ft. Ritchie and because Ficarri continued to complain about the presence of nonunion employees at the Brice House project. I discredit Ficarri's testimony that during his late-January conversation with Nichols and Belucci (when the provisions for the apprentices were discussed) the nonindentured apprentices at Ft. Ritchie were not discussed. I further discredit the testimonies of Nichols and Belucci that during that conversation the nonunion employees at the Brice House were not discussed. I find that both groups were discussed because I do not believe that Ficarri passed up any chance to complain about both groups. I further believe, and credit, Ficarri's testimony that Nichols closed the conversation by telling Ficarri: "You know, if you want to keep your job with IMI you should knock off that non-union talk." (It is further apparent to me that Nichols was referring to both groups in his threat, and Ficarri knew it.)

4. Ficarri did not seek to cause any action by other employees to advance his complaints. Ficarri testified that when he and Totten were at the Brice House, he told Totten that he did not believe that nonunion employees should be employed at the Brice House and that: "I said I didn't really know what to do about it except to further the complaints with my home local, and we would just take it from there." Ficarri did not testify that Totten agreed at that time. Ficarri did, however, testify that, when he and Totten were later at Ft. Ritchie, it was Totten who suggested going to the instructors' home locals to complain about the nonunion employees working at the Brice House. Ficarri further testified that, when Totten made the suggestion at Ft. Ritchie, he, in turn, suggested to Totten that the instructors could suggest to their home locals the withholding of portions of their contributions to the Respondent until the nonunion employees were no longer employed at the Brice House. Ficarri's testimony was therefore both that he first suggested taking the matter to the home locals and that Totten was the first to suggest it. Totten, however, corroborated neither version of Ficarri's testimony, and the General Counsel does not mention either version on brief. I therefore discredit Ficarri's testimony that he had either of these exchanges with Totten. I also find that Ficarri asked other members at Ft. Ritchie and the Brice House project to "take up" the issue of nonindentured apprentices with their home locals, but he did not suggest any specific action such as withholding contributions to the Respondent.

5. The Respondent discharged Ficarri; or, at least, the Respondent accelerated Ficarri's layoff. As quoted above, the Respondent essentially admits on brief that it accelerated Ficarri's layoff. Although Ficarri had repeatedly requested, or at least suggested, that he be laid off during the fall of 2000 into January, no action was taken in that regard until word of Ficarri's complaints got back to Calambokidis. Calambokidis testified that her hearing of Ficarri's complaints about the nonindentured apprentices at Ft. Ritchie was the "straw that broke the camel's back" in deciding what to do with Ficarri. That testimony, however, subsumes that the Respondent was contemplating laying off Ficarri at the time Calambokidis heard of Ficarri's complaints. There is, however, no evidence to support that assumption. It appears, rather, that the Respondent, despite its low apprentice census, was perfectly content to let Ficarri indefinitely stay where he was, drawing journeyman's wages for performing maintenance work.[9] Any doubt on this point is removed by noting Ficarri's undisputed testimony that when, during the week of March 8, he asked Belucci for permission to be absent from work through Friday, Belucci agreed but stated that the Respondent wanted him to go to a job at Clemson University on Saturday, March 10. Clearly, no layoff of Ficarri was contemplated by the Respondent at that point. Moreover, when Stinner told Ficarri that he was terminated, Stinner did not tell Ficarri that he was being laid off as Ficarri had previously requested. Rather, Stinner told Ficarri: "You know, things aren't working out. We're going to have to let you go." This is the traditional language of discharge, not layoff (requested or otherwise). Moreover, I credit Ficarri's testimony that, when Ficarri asked Stinner for a reason for the termination, Stinner: "really raised his voice and was shouting in the phone and said, 'Think of the things you've been saying and doing.' He slammed the phone down and hung up on me." Such language and action was a termination consistent only with a discharge. Finally, Nichols did not deny that when Ficarri telephoned him and asked when he could come to Ft. Ritchie and pick up his things, Nichols replied: "Well, you can't come down here at all. Gene Stinner doesn't want you on the property anywhere near any of the apprentices or students or instructors. You can't come down here at all." Again, this is the language of a hostile discharge, not a friendly parting of the ways that was occasioned only by the necessity for a layoff.

6. Calambokidis knew of Ficarri's complaints about the nonunion employees at the Brice House as well as his complaints about the nonindentured apprentices at Ft. Ritchie, and she discharged Ficarri because of both complaints. Stinner was incredible in his denials that he told Calambokidis about Ficarri's complaints about the nonunion employees at the Brice House, and Calambokidis was incredible in her denials that she knew about those complaints by Ficarri. Calambokidis was further incredible in her testimony that during her telephone calls with Duncan and Jones (and Stinner), Ficarri's complaining about nonunion employees working at the Brice House was not mentioned. Moreover, as Belucci put it, the Brice House was "Joan's [Calambokidis'] place; and as Stinner put it, the Brice House was "Joan Calambokidis' area." That is, Calambokidis was in charge of the renovations of the Brice House,

[9] The apparent reason for this was the great deal of money the Respondent had invested in Ficarri by putting him through the Gerlannus program.

and I believe that she was most diligent in keeping abreast of what was going on there. Ficarri's continued complaining about the nonunion employees working at the Brice House was a potential source of serious trouble that could have been difficult to handle, especially since the Respondent, itself, is funded by a union. I believe that Calambokidis was perfectly aware of this potential, and I believe that that awareness was at least part of the reason that she ordered the discharge of Ficarri.

Again, these are my alternative findings for possible use on review. My determination to dismiss the complaint, and the reasons for that determination, are stated in the preceding subsection of this decision.

Accordingly, I issue the following recommended[10]

ORDER

The complaint is dismissed in its entirety.

Dated, Washington, D.C. March 22, 2002

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.